IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

Writ Petition No.18850 of 2005

DATED 23-1-2007

BETWEEN

M/s.Spartek Ceramics India Limited
Having its registered office at Mittapalem,
Narasingapuram P.O. Chadragiri Taluk, Chittoor District
A.P. represented by its Manager (Commercial)

.. Petitioner

And

The Assistant Commissioner of Central Excise,
Tirupathi Division and others.

.. Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

Writ Petition No.18850 of 2006

ORDER:

Heard learned counsel for the parties. Counters have been filed.

In this writ petition, the petitioner has sought for a declaration that proceeding with auction of the attached goods of the petitioner company was illegal in view of the fact that the company had been declared as a sick company in terms of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and as

proceedings were pending before the BIFR for formulating a scheme.

The respondents attached the property of the petitioner company and tried to proceed with the sale of goods (Ruby Red Variety Polished Granite Tiles) on the ground that the excise duty had not been paid. Whether the respondents could proceed with attachment and consequent sale when the matter was before the BIFR came up for consideration before this Court in W.P.No.3236 of 2006 and this Court vide order dated 9.6.2006 allowed the writ petition and quashed the impugned attachment order by relying on the judgment of the Supreme Court in **Rishabh Agro Industries Limited v. P.N.B. Capital Services Limited** [1].

Following the said judgment, we hold that the respondents could not have gone with the attachment and consequent sale of the goods of the company as the matter was pending before the BIFR.

The learned counsel for the respondents has, however, drawn our attention to the judgment of the Division Bench of Madras High Court in **Tamilnadu Chromates Ltd v. Union of India** [2] in support of his case. Since we have a judgment of the Division Bench of this Court referred to above, we need not go to the judgment of the Madras High Court. It may also be pointed out that the judgment of the Madras High Court was pronounced on 17.3.1994 and the judgment of this Court referred to above is based on the judgment of the Supreme Court in Rishabh Agro Industries Case (supra) has been delivered by Supreme Court subsequent to the Madras High Court judgment. Therefore, the judgment of the Madras High Court may not come to the rescue of the respondents.

The writ petition is accordingly allowed.

23..01..2007

msv.

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[1] AIR 2000 SC 1583

[2] 1994(72) ELT 834 (Madras)